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C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 002389

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TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [RS](#)
SUBJECT: YOU'VE GOT MAIL - MIND IF WE HAVE A LOOK?
REF: MOSCOW 2354

Classified By: D/Pol Min Counselor Dave Kostelancik; reason 1.4 (d)

¶1. (C) Summary: The federal Ministry of Communications and Mass Media has issued a decree allowing eight law enforcement agencies access to citizens' mail and electronic correspondence, and to customer databases of postal and internet services. The decree found opposition inside and outside of the government, including a public objection from the General Prosecutor's office. Government agencies backing this initiative maintained that it did not violate the Russian Constitution or Russian law, noting that the decree requires officials to receive a court order giving them access to this information. However, many expressed the concern that the decree was sufficiently vague to allow officials broad leeway and hence empower them to abuse a citizen's right to privacy. Other commentators shrugged their shoulders at the decree, noting that authorities already have access to citizens' correspondence. They saw this move as political "propaganda." The interagency spat that the decree inspired supports this theory, and indicates that the decree was more political than it was legal. The decree and its response appear to be the products of an ongoing struggle between liberal and conservative elites, a struggle which comes to the fore as Medvedev tries to define Russia's way forward and his advisors jockey for position.
End Summary.

GOR goes postal

¶2. (SBU) The Communication Ministry ("the Ministry") issued a decree on July 21 allowing law enforcement organs access to citizens' mail and electronic correspondence, as well as to customer databases of postal and internet services. The law enforcement organs receiving this right include eight agencies, among them the Federal Security Service (FSB), the Interior Ministry (MVD), and foreign intelligence (the SVR). The decree caused an immediate outcry, finding staunch opponents both inside and outside the government. Human rights Ombudsman Vladimir Lukin asked the Ministry of Justice to bring in a legal expert to re-examine the validity of the document. The decree also sparked an interagency spat among the GOR; General Prosecutor representative Larissa Stepanova announced on September 4 her opinion that the law was unconstitutional. A St. Petersburg journalist, Pavel Netupsky, brought a complaint to the Supreme Court, which ruled in favor of the decree on September 14. Netupsky has not decided whether to appeal the verdict.

¶3. (SBU) The government agencies backing this initiative maintained that this measure was merely "technical" and did not impinge on citizens' rights, which are already protected by law. Article 23 of the Constitution protects citizens' right to "privacy of correspondence in mail, telegraphic, and other messages or information," and Law 144 ("on Operative-Investigative Activity") forbids authorities from accessing citizens' private correspondence unless they have received a court order allowing them to do so in the context

of an ongoing criminal case. The Ministry claimed that the decree respected these requirements; according to the decree, in urgent cases of threat to national security, authorities may first access correspondence, and then inform a court within 24 hours. If they do not receive permission within 48 hours, they must stop their investigation.

Much room for violation

¶4. (SBU) However, the decree makes no references to the Constitution, and is conspicuously vague regarding the circumstances that would constitute such emergency activity. It simply enjoins companies providing communication services to provide information to law enforcement officials "at their request." It sets no rules for how or when officials would show their court order to postal workers or internet providers. Stepanova told moderate daily Vedomosti September 14 that she believed the Ministry was "overstepping its authority," and expressed concern that the decree lacks a guarantee that agents would stop their investigation if they did not receive the necessary court permission. With such few safeguards on officials seeking this information, the decree's de facto implication is: "Trust us; we're the FSB." In keeping with this mentality, an FSB representative told Vedomosti that details on the modus operandi of such information hunts were "secret." By allowing officials so much wiggle room, the decree potentially violates Article 12 of the Universal Declaration of Human Rights, which states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence."

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¶5. (C) Russians refer to such official snooping as "perlustration," a practice defined in France in the 18th century, but with its own long and at times regrettable history here. According to history professor Vadim Khokhlov, the practice of providing sequestered rooms at the post office for special services goes back at least as far as Catherine the Great's "black offices." Soviet governments were less subtle; officials automatically examined all international correspondence, and a special perlustration division was housed in a building of the main center for highway and rail postal transportation in Moscow. Our human rights contacts are concerned that this decree will create a link to these past practices. Valentin Gefter, Director of the Institute of Human Rights, told us September 14 that the decree is "nonsense" that violates the Russian Constitution and Russian law. In his opinion, only the most extreme cases could justify a violation of such fundamental rights, and he doubted that authorities' activity would be confined to these extreme cases. Putting it more simply, Lyudmila Alekseyeva of Moscow Helsinki Group told us, "They are spitting on the Constitution," adding that in her opinion, the most frightening aspect of this decree is the possible effect on internet users. Cyberspace is ill-defined legally in many countries, and Alekseyeva noted that with access to databases of users, authorities could examine all websites that selected citizens visited.

Just an interagency dust-up?

¶6. (SBU) Some experts shrugged their shoulders at this development, noting that authorities already have access to citizens' correspondence. Andrey Soldatov, editor of the Agentura.ru website, said that such practices have existed for years, and that it is well-known that special services follow many opaque practices in pursuing suspected criminals or enemies of the state. (Note: In March 2008, then-Communication Minister Leonid Reyman signed an order allowing the FSB to monitor telephone conversations remotely without a warrant. End note.) Law 144 (see para 3) is only one of many laws in Russia whose implementation in practice falls short of its liberal stipulations. According to

Soldatov, authorities already maneuver within a highly flexible definition of what constitutes "permission from a court" to invade citizens' privacy. Therefore, this decree is an act of "propaganda," designed to put a democratic gloss on an already existing -- and undemocratic -- practice.

¶7. (SBU) If the motivation for this decree was more political than judicial or legal, then the interagency squabble that the decree inspired may reflect bureaucratic warfare between rival groups of elites within the GOR. Pundit Tatyana Stanovaya of the Center for Political Technologies posited that General Prosecutor Yuriy Chayka's goal in objecting to the decree was "to deliver a blow to the Communication Ministry." The Communication Minister, Igor Shchegolev, has in the recent past been the subject of what Stanovaya called "an information campaign." In May, Kompromat.ru reported an "apparatus-based attack" on Shchegolev, led by liberal Medvedev ally Igor Yurgens, head of the INSOR think-tank. The Kremlin displeasure with Shchegolev appeared in a report panning Russia's inability to make a smooth transition to "e-government," one of Medvedev's pet projects. "Highly-placed government sources" were quoted as suggesting the possibility of eliminating Shchegolev's Ministry altogether.

¶8. (SBU) As Medvedev attempts to define himself and lay out a way forward for Russia in advance of the 2012 elections (see reftel), his henchmen are jostling for position. Stanovaya sees Chayka as attempting to cement his relationship with President Medvedev, and carving out a position for himself in the liberal camp among Medvedev's advisors. While recent news reports of a purported rift between Medvedev and Putin are likely overblown, there is evidence that Medvedev has gradually built up a small "liberal vertical" loyal to him and to his "Russia, Forward" agenda of reform and increased rule of law. According to Stanovaya, Chayka has long counted himself in that group.

Comment

¶9. (C) While it is undoubtedly true that authorities already exceed the boundaries of Law 144 in practice, this decree still represents a disturbing step backwards. There exist elements among law enforcement agencies who will take advantage of any additional leeway that they receive to steamroll individual freedoms in the name of national security. At the same time, a number of highly-placed individuals do not see an interest for Russia in allowing an unfettered FSB to tarnish Russia's international reputation

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and impede its development. That the Supreme Court's decision upholding the decree coincided almost exactly with Medvedev's liberal-tinged "Russia, Forward" article (reftel) is a clear illustration that GOR policy towards democracy and human rights is not monolithic. Both the decree and the Prosecutor's response to it represent dueling blows in the ongoing contest between conservative and liberal elites.
Beyrle